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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,113	09/24/2003	Leonard R. Kilby	79123-1131	8154
38406	7590	10/25/2006	EXAMINER	
MICHAEL A. O'NEIL, P.C. 5949 SHERRY LANE, SUITE 820 DALLAS, TX 75225			TAWFIK, SAMEH	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 10/25/2006

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/670,113  
Filing Date: September 24, 2003  
Appellant(s): KILBY ET AL.

**MAILED**  
**OCT 25 2006**  
**Group 3700**

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Michael O'Neil  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 08/09/2006 appealing from the Office action mailed 12/06/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4,522,292	Euverard et al.	06/1985
5,317,859	Schneider et al.	06/1994

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**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 63 is rejected under 35 U.S.C. 102(b) as being anticipated by Euverard et al.

(4,522,292).

Euverard discloses a method of assembling wrapped bakery products into predetermined patterns and thereafter transferring the patterns of wrapped bakery products into bakery trays for transport including the steps of providing a grouping apparatus (Fig. 1; via feed conveyor 21 and grouping gate 27) for receiving individual wrapped bakery products (Fig. 2; via group products 28; column 1, lines 9-13); arranging groups of between 1 and about 6 wrapped bakery products on the grouping apparatus (Figs. 3-6); providing a turntable (Fig. 2, via turn table 60); providing a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable (Figs 1 and 2, via conveyor 25); and arranging a subsequent group of wrapped bakery products on the grouping apparatus (Fig. 1; via feeding conveyor 21 and grouping gate 27) during movement of a previous group of wrapped bakery products from the grouping apparatus onto the turntable under the action of the transfer apparatus, see for example (Figs. 1 and 2).

Claim 64 is rejected under 35 U.S.C. 102(b) as being anticipated by Schneider et al. (5,317,859).

Schneider discloses a method of forming wrapped bakery products into predetermined pattern thereafter transferring the patterns of wrapped bakery products into bakery trays including the steps of providing a turntable (Fig. 1, via turn table assembly 70); forming a pattern of wrapped bakery products on the turntable (Fig. 2); providing a transfer apparatus (Figs. 4A-4C); moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus (Figs. 4A-4C); and forming a subsequent pattern of wrapped bakery products on the turntable during movement of a previous pattern of wrapped bakery products into a bakery tray under the action of the transfer apparatus, see for example (Figs. 2 and 4A-4C).

#### **(10) Response to Argument**

Appellants contend that Euverard's reference can not perform both steps of "providing a grouping apparatus for receiving individual wrapped bakery products" and the step of "providing a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable" as required by claim 63. Appellants have referred to the office's action of the final rejection as being inconsistent as of pointing out to the claim limitations.

The examiner maintains that the law of anticipation requires a distinction be made between the invention described or taught and the invention claimed. It does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claim(s) under consideration "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or "fully met" by it.

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*Kalman v. Kimberly-Clark Corp.*, 218 USPQ 781. Anticipation under 35 USC 102 is established when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Systems, Inc.*, 221 USPQ 385.

Note that as set forth on the grounds of rejection and is clearly anticipated by Euverard the step of providing a grouping apparatus (Fig. 1; via grouping gate 27) and the step of providing transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable (via conveyor 25) are clearly shown and supported by Euverard.

Appellants further argue that the use of the transfer apparatus of the present invention comprises an important improvement over the disclosure of the prior art, by means of the transfer apparatus it is possible to accumulate a subsequent group of wrapped bakery products on a grouping apparatus while the previous grouping of wrapped bakery products is being transferred into the turntable. Appellants argue that this is not disclosed in Euverard because there the same device the in-feed conveyor 21, is used to group bakery products and to transfer them.

The examiner maintains that as set forth in the office action referring to the grouping gate 27 as the grouping apparatus and to the conveyor 25 as the transfer apparatus, which there are two different means for two different jobs, not as what appellants argue of the use of in-feed conveyor 21 for the two jobs.

Appellants contend that Euverard's wrapped bakery products are not arranged on the grouping gate 27, but rather are lined up on the conveyor belt 25 behind the grouping gate 27.

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The examiner maintains that such lining up of the wrapped baker product of Euverard by the grouping gate 27 is equivalent to the claimed "arranging".

Again appellants contend that Schneider's reference does not disclose the claimed limitations of moving patterns of wrapped bakery products directly from the turntable into bakery trays as disclosed by claim 64, as Schneider's discloses a transfer conveyor assembly 80 between the turntable and the bakery trays.

The examiner maintains that as Schneider disclosed all the claimed limitations of claim 64, regardless to the conveyor 80 being located between the turntable and the bakery tray, as such conveyor could be considered as part of the claimed transfer apparatus, which make the wrapped bakery products directly moved from the turntable into bakery trays via under the action of the transfer apparatus.

Appellants further content that Schneider does not disclose the step of forming a pattern of wrapped bakery products on the turntable nor the step of forming a subsequent patter of wrapped bakery products on the turntable during movement of a previous pattern of the bakery products into a tray.

The examiner maintains that such argument has been disclosed by Schneider, as the turntable rotates to re-arrange the bakery products, that could be considered as forming a pattern of bakery products on the turntable. Further, Schneider discloses the step of forming a subsequent patter of wrapped bakery products on the turntable during movement of a previous

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pattern of the bakery products into a tray that was clearly shown in Fig. 2 as one pattern being arranged in the turntable while the previous one being feed to the bakery tray.

**(11) Related Proceeding(s) Appendix**

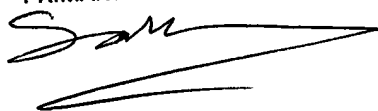
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

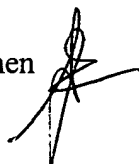
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SAMEH H. TAWFIK  
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